

1 motion was set for hearing on February 14, 2011, but was taken under submission without
2 oral argument. On February 14, 2011, Plaintiff lodge an untimely opposition which this
3 Court accepted and filed *non pro tunc* to the date received. Defendant filed a reply on
4 February 18, 2011.

5 DISCUSSION

6 Defendant seeks dismissal of the action for failure to state a claim pursuant to Rule
7 12(b)(6) of the Federal Rules of Civil Procedure. Specifically, Defendant argues Plaintiff
8 fails to allege sufficient facts to establish Pfizer owed his wife a duty of care, and fails to
9 allege facts to support causation to assert a claim of negligent failure to warn.

10 Defendant argues it did not owe a legal duty of care to Plaintiff's wife pursuant to
11 the "learned intermediary" doctrine. Under this doctrine, the manufacturer of a drug
12 fulfills its duty to warn by providing the physician with the possible side effects of drugs.
13 See Brown v. Superior Court, 44 Cal.3d 1049, 1061 (1988); Carlin v. Superior Court, 13
14 Cal.4th 1104, 1354 (1996). If the manufacturer provides the physician an adequate
15 warning, it has no duty to insure the physician provides the warning to his or her patient.
16 See Stevens v. Parke, Davis & Co., 9 Cal.3d 51, 65 (1973).

17 In the complaint, Plaintiff alleges he and his deceased wife were not aware diabetes
18 and hyperglycemia were possible side effects of the drug Geodon. There are no allegations
19 regarding the warning provided to or whether any warning was provided to Plaintiff's
20 doctor. Plaintiff fails to sufficiently allege Defendant breached its duty to warn Plaintiff's
21 wife's doctor of possible side effects of the drug. In addition, the complete lack of
22 allegations regarding Pfizer's warning to the doctor prevents Plaintiff from sufficiently
23 alleging causation in support of his claim. Accordingly, Plaintiff fails to state a claim.

24 Defendant seeks dismissal of the complaint with prejudice. However, the Court is
25 not convinced Plaintiff cannot sufficiently plead facts to state a claim and will, therefore,
26 dismiss the complaint without prejudice.

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1 **CONCLUSION AND ORDER**

2 Based on the foregoing, IT IS HEREBY ORDERED:

- 3 1. Defendant's motion to dismiss (Doc. No. 5) is **GRANTED**;
- 4 2. The complaint is **DISMISSED without prejudice**.
- 5

6 DATED: July 21, 2011

7 
8 JOHN A. HOUSTON
9 United States District Judge

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